IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

FAO.No. 261 of 2006()

I.A.NO.4597/2005 IN OS.473/2002 of I ADDL.SUB COURT,TRIVANDRUM
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APPELLANT/PETITIONER/1ST DEFENDANT

NANDAKUMAR, S/O. SIVASANKARAN NAIR,
RESIDING AT T.C.25/2917, SREEPADMAM DHARMADESOM
ROAD, VANCHIYOOR, THIRUVANANTHAPURAM.

BY ADV. SRI.V.S.BABU GIREESAN

RESPONDENTS/COUNTER PETITIONER/PLAINTIFF:

RAMADEVAN, S/O. VELAYUDHAN,
ARCHANA, T.C.2/3227, PATTOM,
THIRUVANANTHAPURAM.

BY ADV. SRI.A.RAJASEKHARAN NAIR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 08/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & K.T.SANKARAN,JJ.

F.A.O.No.261 of 2006

Dated this the 8th day of March, 2007

JUDGMENT

Sankaran,J.

The application filed by the first defendant in O.S.No.473/2002 on the file of the 1st Additional Sub Court, Thiruvananthapuram under Order IX Rule 13 of the Code of Civil Procedure was dismissed following the dismissal of the application for condonation of delay of seven days in filing the application. No reasons are stated in the impugned order. The suit was decreed ex parte on 22-10-2005. It is stated in the affidavit accompanying the application that due to inadvertent mistake committed by the advocate's clerk in noting the posting date, the first defendant did not appear before the court, which resulted in the ex parte decree being passed.

2. Having heard counsel for the parties, we are of the view that an opportunity should be afforded to the appellant to contest the case on merits. In the facts and circumstances of the case the order impugned is set aside. I.A.No.4597/2005 is allowed on condition that

the appellant shall pay a sum of Rs.2,000/- as costs to the respondent through the counsel appearing for the respondent, within a period of two weeks from today. If the cost is paid, the ex parte decree will stand set aside and the court below shall dispose of the suit on the merits. The parties shall appear before the court below on 2-4-2007. The court below shall dispose of the suit within a period of three months from the date fixed for appearance. If the condition as stated above is not complied with, the F.A.O will stand dismissed with costs.

(KURIAN JOSEPH, JUDGE)

(K.T.SANKARAN, JUDGE)

ahg.